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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Copeland, Kennon R.

Serial No. : 09/714,387

Group Art Unit: 3623

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Examiner: Boyce, Andre D.

Title: SYSTEM AND METHOD FOR ESTIMATING DAILY SALES
VOLUME

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Assistant Commissioner for Patents

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Dear Sir:

In response to the Final Office Action of May 1, 2006, Applicant has filed a Notice of Appeal. In conjunction with those concurrently-filed papers, Applicant respectfully requests a pre-appeal brief review of the Final Office Action in light of the below Remarks.

REMARKS

Claims 1-19 are pending. In the Office Action, claims 1-4, 6-10, 12, 13 and 17 were finally rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,032,125 to Ando (hereinafter "Ando") in view of U.S. Patent No. 6,609,101 to Landvater (hereinafter "Landvater"). Claims 5, 11, and 19 were finally rejected under 35 U.S.C. § 103(a) as allegedly

being unpatentable over Ando in view of Landvater, in further view of U.S. Patent No. 5,420,786 to Felthausen et al. (hereinafter "Felthausen"). Claims 14 and 18 were finally rejected under 35 U.S.C. § 103 (a) as being unpatentable over Ando in view of Landvater, and further in view of U.S. Patent No. 6,021,394 to Takahashi (hereinafter "Takahashi"). Claims 15 and 16 were finally rejected under 35 U.S.C. § 103 (a) as being unpatentable over Ando in view of Landvater, in further view of Takahashi, and further in view of Felthausen. Applicant respectfully traverses the rejections of record, and further submits that claims 1-19 are in condition for allowance.

Accordingly, Applicant requests that the rejections of record be withdrawn.

I. The Examiner Has Failed To Establish A Prima Facie Case Of Obviousness

Independent Claims 1, 7, 12, and 17 are directed towards systems and methods of estimating the daily sales of a product based on calculating a projection factor from historical sales data and applying it to a sampling of current sales data. Each requires the use of "sampled sales data" to determine an estimate of "total sales," "total daily sales," or "daily sales volume." As explained in the specification, "a significant number of retail outlets are not able to or do not elect to have sales data sampled in a form needed for analysis." (Specification, pg. 1, ln. 14 - pg. 2, ln. 1). Therefore, an estimation of a daily sales volume of a product is determined by "taking a small sampling of current daily sales of the product and weighting this sampling using a larger pool of sales history data." (*Id.*, pg. 8, lns. 16-19).

To establish a *prima facie* case of obviousness, three basic criteria must be met:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. (*In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991))

Manual of Patent Examining Procedure, § 2143. The Examiner has failed to meet his burden of establishing a *prima facie* case of obviousness. First, the Examiner has not pointed to any suggestion or motivation in either of the references or elsewhere that would lead one to combine the disclosures of Ando and Landvater. Second, even if such a combination is made, neither Ando

nor Landvater disclose or suggest estimating the total daily sales of a product by using a projection factor derived from historical sales data as applied to a sampling of current sales data.

Reconsideration and withdrawal of the rejection of claims 1-19 is therefore solicited.

II. There is no motivation to combine Ando with Landvater

Ando cannot be properly combined with Landvater as there is no motivation to combine those references. Ando is directed to techniques for forecasting the demand for products based on the “fluctuation trend” of sales results. (Ando, col. 1, ln. 66 - col. 2, ln. 11). Ando describes a neural network that runs multiple forecasting models multiple times for each product to allow the system to “learn” the best model. (Ando, col. 4, lns. 12-36). By “feeding the sales results in a certain period, the neural network learns so as to obtain an output close to the sales results of a certain later period, that is, an output suited to the fluctuation trend of sales results...” (*Id.*, col. 2, lns. 20-24). The neural network utilizes the sales results of the previous 13 months, dating back from the “learning point,” including the sales results of one month of the same period of the previous year to optimize the computer model. (*Id.*, col. 2, lns. 49-52).

Landvater is directed to a system for forecasting product sales and projected replenishment shipments for a retail store supply chain “using product sales history records generated by retail stores in the supply chain.” (Landvater, col. 4, lns. 17-21). In contrast to Ando, Landvater is designed “to permit extremely large numbers of products to be planned on relatively inexpensive computers.” (Landvater, col. 10, lns. 20-22). One of ordinary skill in the art would not be motivated to combine the repetitive learning method and system of Ando with the computationally-efficient streamlined system of Landvater. The Examiner has failed to point to any suggestion or motivation in either of the references or elsewhere that would lead to such a combination. Further, one of ordinary skill in the art would not have a reasonable expectation of success in combining the method of Ando with the disclosure of Landvater. *In re Merck & Co., Inc.*, 800 F.2d 1091 (Fed. Cir. 1986). Accordingly, such a combination is not properly made.

III. Neither Ando Nor Landvater Disclose Or Suggest The Use Of “Sampled Sales Data” To Forecast Total Sales

Neither Ando nor Landvater disclose or suggest the use of sampled data as required by independent claims 1, 7, 12, and 17. Instead, they require the use of the historical sales of a store in order to predict the future sales of that same store.

Ando describes the use of “13-month sales results by a product ... at the retail shop” to use as a basis for forecasting. (*See* Ando, col. 4, lns. 34-42). Although Ando discloses that “the forecasting value ... obtained by demand forecasting conducted every week is compared with the actual sales results value of every week,” it does not disclose or suggest the use of “sampled sales data” to forecast the total sales results, as recited in independent claims 1, 7, 12, and 17. (*Id.*, col. 5, lns. 41-44). Rather, sales for a prior period are used as inputs into a computer model to forecast the total sales for a certain later period.

Even assuming *arguendo* that it may be properly combined with Ando, Landvater does not disclose or suggest the use of “sampled sales data,” and thus cannot remedy the deficiency of Ando outlined above. Landvater discloses “the system comprises a forecasting system that determines projected sales of a plurality of products for a retail store in a supply chain by using the product sales history records for said retail store.” (*Id.*, col. 4, lns. 21-24; *see* claims 1, 30, 48, 53). In contrast to the claims at issue, Landvater discloses determining “projected sales of a first plurality of products for a retail store ... using the product sales history records for said retail store.” (Landvater, claims 1, 30, 48, and 53). Therefore, the disclosure of Landvater is limited to the use of historical sales data for a particular store to forecast sales data for that store, rather than sampling.

Applicant’s claims 1, 7, 12, and 17 do not involve the use of prior total sales volume to predict future total sales volume, as in Ando and Landvater. Rather, Applicant’s claims estimate the current total sales volume from a *sample* of the current sales. In this manner, real-time sales data

that is only available from particular stores is used to estimate the total sales volume for all stores.
(See *Id.*, pg. 11, lns. 14-18).

Accordingly, independent claims 1, 7, 12, and 17 are not believed obvious over Ando in view of Landvater. Claims 2-4, 6, 8-10, and 13 depend from either claims 1, 7, or 12, and are believed allowable at least for the reasons discussed above regarding claims 1, 7, and 12. It is respectfully requested that the rejections of claims 1-4, 6-10, 12, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Ando in view of Landvater be withdrawn.

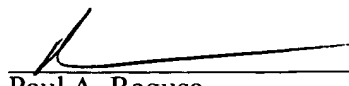
IV. Rejections under 35 U.S.C. § 103(a) based on Ando in view of Landvater in further view of Felthausen and/or Takahashi

Claims 5, 11, 14-16, and 18-19 were finally rejected under 35 U.S.C. § 103 (a) as being unpatentable over Ando in view of Landvater, and further in view of Felthausen and/or Takahashi. Neither Felthausen nor Takahashi remedy the deficiencies of Ando and Landvater outlined above. Therefore, it is respectfully requested that the rejection of dependent claims 5, 11, 14-16, and 18-19 as being obvious over Ando in view of Landvater in further view of Felthausen and/or Takahashi be withdrawn.

V. Conclusion

Accordingly, the cited references, whether alone or in combination, fail to anticipate or render unpatentable the independent claims of the present invention. Therefore, Applicant respectfully requests that the rejections of record be withdrawn.

Respectfully submitted,



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